

MEMORANDUM

TO: City of Milwaukee Deferred Compensation Plan Board
Beth Conradson Cleary, Executive Director, City of Milwaukee Deferred
Compensation Plan

FROM: Jim Carroll, Assistant City Attorney

DATE: April 6, 2020

RE: Effect of March 27, 2020 COVID-19 Relief Legislation (CARES Act)

The following is a high-level overview of “Coronavirus Aid, Relief and Economic Security Act” (“CARES Act” or “Act”) provisions relevant to the City of Milwaukee Deferred Compensation Plan (“Plan”). The Act became law on March 27, 2020. Among a broad array of features intended to ease economic hardships during the coronavirus health crisis, the Act relaxes some of the rules normally applicable to retirement plans.

I. CARES Act Provisions

- 1) The Act’s provisions apply to our Plan.
 - a. Retirement plan relief provisions are found in Sections 2202 and 2203 of the Act. They generally apply to “eligible retirement plans,” which the IRS defines to include 457 plans such as the City’s Deferred Compensation Plan.
- 2) The Act permits Plan participants to take penalty-free “coronavirus-related distributions” of up to \$100,000.00 in 2020. A coronavirus-related distribution is one taken by an individual:
 - a. Who is diagnosed with coronavirus via a CDC-approved test; or
 - b. Whose spouse or dependent is diagnosed with coronavirus via a CDC-approved test; or
 - c. Who experiences “adverse financial consequences” due to coronavirus-related quarantine, layoff, furlough, reduced work hours, closure of place of employment, inability to work due to lack of child care, or “other factors” as determined by the Secretary of the Treasury or her/his designee.
- 3) The Plan may rely on a participant’s certification that a distribution is coronavirus-related.
- 4) A participant may repay, via one or more contributions to the Plan, a coronavirus-related distribution over the following three year period.
 - a. Repayments to the Plan of coronavirus-related distributions are treated as rollover contributions and thus aren’t subject to annual contribution limits.

- b. Additionally, the income from any coronavirus-related distribution may, if the participant chooses, be spread over a three year period for tax reporting purposes.
- 5) For a period of 180 days following the Act's effective date (March 27, 2020), permissible loan limits are increased from the lesser of \$50K or 50% of participant's vested account balance to the lesser of \$100K or 100% of participant's vested account balance.
 - a. Any loan repayments that would otherwise be due between March 27, 2020 and December 31, 2020 are delayed for one year.
 - b. This repayment delay period is not included in the five year maximum repayment term.
- 6) Required minimum distributions are waived for calendar year 2020.

II. Board Considerations

1) Coronavirus-Related Distributions

- a. It appears that the Plan has the option of permitting coronavirus-related distributions, but is not required to do so.
- b. However, even if the plan does not choose to permit coronavirus-related distributions, an individual who terminates employment for a coronavirus-related reason may still take an early distribution without a 10% early withdrawal penalty. (Sec. 2202(a)(6)(B))

2) Loans

- a. It appears that the Plan has the option of permitting loans up to the temporarily increased limits, but is not required to do so.
- b. However, the Act's provisions extending loan repayment periods appear to be mandatory.

3) Required Minimum Distributions

- a. No Plan change is necessary here; the Plan simply should not make required minimum distributions in 2020.

4) Plan Document Amendments?

- a. The Plan may begin operating under the permissible CARES Act changes without amending the plan document, provided that it subsequently amends the plan document to reflect those changes by December 31, 2024. However, the Plan may not begin implementing the CARES Act provisions without the approval of the Common Council. If the Board wishes to implement these changes, it should promptly seek a Common Council resolution approving their implementation. The Board can then work to formally amend the plan document in the coming months.